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Attorney for Defendants Jackie Biskupski and James Allred

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

RUSSELL G. GREER

Plaintiff,

vs.

GARY R. HERBERT, in his individual capacity as Governor of the State of Utah; SEAN D. REYES, in his official capacity as Attorney General of the State of Utah; SIM S. GILL, in his official capacity as District Attorney of the City and County of Salt Lake; JACKIE BISKUPSKI, in her official capacity as Mayor of the City of Salt Lake, BEN MCADAMS, in his official capacity as Mayor of the Count of Salt Lake, KATHY BERG, in her official capacity as Director of the Division of Commerce; JAMES ALLRED, in his official capacity as Business Licensing Manager for the City of Salt Lake; ROLEN YOSHINAGA, in his official capacity as Director of Planning and Development of the County of Salt Lake,

Defendants.

**CITY DEENDANTS'
RESPONSE TO PLAINTIFF'S
SUPPLEMENTAL BRIEF RE:
STANDING AND RIPENESS**

Case No. 2:16-cv-01067

Judge Dustin B. Pead

Defendants Jackie Biskupski and James Allred in their official capacity (collectively the “City Defendants”), by and through counsel of record, and pursuant to the Court’s Order of April 21, 2017 (Dkt. #34), submit the following Response to Plaintiff’s Supplemental Brief re: Standing and Ripeness (Dkt. #35).

ARGUMENT

Plaintiff has not alleged facts that would establish the required elements of standing with regard to the City Defendants.¹ Plaintiff’s Supplemental Brief makes no mention of the City Defendants and appears to be addressed to the State Defendants and County Defendants. Moreover, the alleged injuries identified in Plaintiff’s Complaint and Supplemental Brief, even assuming they meet the requirement of “injury-in-fact,” are not “traceable” to the actions of the City Defendants, nor can any declaratory or injunctive relief against the City Defendants provide redress to Plaintiff.

Plaintiff Greer seeks to challenge the constitutionality of certain criminal and civil laws enacted by the State of Utah related to prohibitions on acts of prostitution and brothels as defined therein. Specifically, Plaintiff challenges Utah Code §§ 76-10-1302, -1303, -1304, -1305 and § 47-1-1 et seq. *See* Complaint ¶¶ 26-31. Plaintiff claims that enforcement of these state laws by the Governor, the Utah Attorney General and the Salt Lake County District Attorney violates his

¹ The court noted the required elements of standing as set forth in *Bronson v. Swensen*, 500 F.3d 1099, 1106 (10th Cir. 2007) (explaining the elements of standing) and that the plaintiff bears the burden of establishing these elements. *See id.*

federal and state constitutional rights to due process, equal protection and freedom of speech and association, and similar claims under the Utah Constitution. *See* Complaint ¶¶ 31, 89-90, 99, 110, 115-16, 120, 123-24.

Plaintiff's alleged injuries are: he was denied a business license from the State of Utah to operate a brothel, he is subject to potential prosecution by the Salt Lake County District Attorney, Sim Gill, for soliciting prostitutes, and he has suffered economic harm from being forced to travel to other states where prostitution is legal. None of these injuries involve the City Defendants in any way. Notably, Plaintiff does not allege any challenge to the constitutionality of City ordinances. Moreover, he does not allege that he is potentially subject to any threat of prosecution by Salt Lake City.² He does not allege any specific action or threatened harm by Defendants Biskupski and Allred that have caused him injury. He does not allege any attempt to register or apply for a business license from Salt Lake City, and even acknowledges that he does not intend to own or operate a brothel. *See* Complaint ¶ 88. Indeed, the only allegations against the City Defendants merely identify Ms. Biskupski as the Mayor and Mr. Allred as the Business License Manager. *See* Complaint ¶¶ 13, 16. Plaintiff has not shown how his alleged injuries are related to or were caused by the acts of the City Defendants, nor how the requested relief would

² Although Plaintiff has not alleged actual or threat of prosecution by the City, under Utah Code § 10-3-928, the City Attorney may prosecute violations of City ordinances, and may prosecute, under state law, infractions and misdemeanors occurring within the boundaries of the municipality. However, neither Biskupski nor Allred have the authority to enforce or prosecute alleged criminal violations under state law. Thus, the necessary element of causation is lacking. *See Bronson*, 500 F.3d at 1109-10. Likewise, redressability is not met where a defendant has no authority to enforce a challenged statute. *See id.* at 1111-12.

redress his harm. The City Defendants cannot change state law or force the state to provide a business license.

Accordingly, Plaintiff cannot state a claim for relief against the City Defendants and Plaintiff's Complaint should be dismissed against the City Defendants as a matter of law.

DATED this 19th day of May, 2017.

/s/ Catherine L. Brabson
CATHERINE L. BRABSON
*Attorney for Defendants Jackie Biskupski
and James Allred*

CERTIFICATE OF SERVICE

I hereby certify that on 19th day of May, 2017, a true and correct copy of the **CITY DEFENDANTS' RESPONSE TO PLAINTIFF'S SUPPLEMENTAL BRIEF RE: RIPENESS AND STANDING** was electronically filed with the Court using the CM/ECF system, which sent notice to the following:

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And was sent via email and first class mail, postage prepaid, to the following:

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/s/ Lindsay Ross